December 8, 2005: NORTON, CBC NOMINATIONS CHAIR, EXPLAINS CBC STRONG OPPOSITION TO ALITO

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NORTON, CBC NOMINATIONS CHAIR, EXPLAINS CBC STRONG OPPOSITION TO ALITO AT CBC PRESS CONFERENCE Washington, DC--At a Congressional Black Caucus (CBC) press conference with CBC Chair Mel Watt (D-NC) and other Caucus members, CBC Judicial Nominations Chair Eleanor Holmes Norton (D-DC) said that her investigation showed Judge Samuel Alito had spent his legal and judicial career at war with race discrimination remedies. The House CBC members, who voted unanimously to oppose Alito yesterday, are so concerned about the nominee’s record on racial discrimination that CBC representatives are seeking a meeting with the 14 Senators who have positioned themselves as critical decision-makers on the judicial nominee. Norton said that Alito’s consistent dissents from his judicial colleagues were the best evidence that his “hard-right views [are] far from the judicial mainstream.” Citing his consistent pattern of dissents in employment discrimination cases as examples, Norton said that it should be unthinkable to confirm a rigid conservative for the seat to be vacated by Justice Sandra Day O’Connor, the justice most associated with mainstream judicial conservatism.

Warning that senators are approaching an election year, Norton said that the high stake for African Americans means that this vote will not be forgotten. Norton's full statement follows.

All the House members of the Congressional Black Caucus voted unanimously yesterday to oppose the confirmation of 3rd Circuit Judge Samuel Alito to the United States Supreme Court. If we had secured the meeting with Judge Alito that we requested in order to respond to at least some of our most serious concerns, perhaps we could have been persuaded to wait until the January hearings. However, the administration has refused to grant the necessary meeting and considering what the very extensive written record reveals, the Congressional Black Caucus could not wait one moment longer to strongly press the entire Senate, particularly the 14 Republicans and Democrats who may well constitute the deciding votes, to reject this nominee.

Samuel Alito’s numerous opinions rendered for 15 years as a judge and his writings for six years at high levels in the Justice Department reveal a legal mind at war with the clear and settled direction of the Congress of the United States in its statutes and the United States Supreme Court in its rulings during the last 50 years of recovery and reform from three painful centuries of slavery and racial discrimination. Judge Alito’s record on race and on allied issues reveals personal and legal views unyieldingly set against our rights. Seated on the Supreme Court as a justice, where he would be less constrained by precedent, Alito would have the opportunity that he has sought for 15 years of dissents to reinforce, strengthen, and implement these extreme positions.

What is most troubling about Judge Alito is the consistency and predictability of his almost automatically hard-right views, far from the American judicial mainstream. It should be unthinkable for the Senate to confirm a conservative whose views are so inflexibly settled to fill the seat to be vacated by Sandra Day O’Connor, the justice whose thoughtful opinions are most associated with mainstream conservatism.

The best evidence that Judge Alito is a judge of extreme views is not our judgment, but the often strongly critical written opinions of his judicial colleagues. Judge Alito has spent his years on the bench compiling an unusually long and consistent record as a judicial dissenter, particularly in cases involving constitutional and legal rights and in commerce clause cases to restrict congressional action. His opinions in cases unrelated to race, particularly involving congressional commerce clause authority, often pose a danger as great as his many dissents in race cases. For example, his dissent in United States v. Rybar, where he unsuccessfully sought to restrict congressional authority to regulate machine guns is an example of a dangerous retrenchment with far-reaching consequences for many varieties of federal legislation that have long been considered well within congressional power affecting Americans of every background. However, Alito’s views pose a special danger to people of color and to women. Because Judge Alito’s cases on race are the most disturbing and because of the CBC’s particular responsibilities, the pattern that emerges form his dissents in employment discrimination cases, which constitute the largest number of federal discrimination cases, are particularly emblematic.

Faced with Supreme Court precedents upholding remedies for discrimination, Judge Alito has sought instead to close the federal courts to job discrimination claims by using unprecedented technical evidentiary standards long rejected by the Supreme Court. For 40 years in an unbroken record of thousands of job discrimination cases, the Supreme Court and every federal circuit have left no doubt that discrimination claims must not be prematurely destroyed by requiring significant upfront evidence before trial. Consequently, all the 3rd Circuit judges in an en banc review in Sheridan v. E.I DuPont de Nemours and Company criticized Judge Alito, the only dissenter, for seeking to elevate the standard necessary for a woman, who alleged her employer failed to promote her, to even get access to the federal courts to attempt to prove discrimination. Undeterred, the next year in Bray v. Marriott Hotels, Judge Alito was similarly

admonished by a 3rd Circuit majority in a racial discrimination case, where a hotel employee was denied a promotion. In sharply criticizing Judge Alito, the majority said that if they followed his lead, “Title VII [the basic job discrimination statute] would be eviscerated.” Habitually attempting to use such procedural technicalities to get around precedents, Judge Alito has been a virtually automatic vote to deny discrimination claims in 14 of the 18 job discrimination cases he has considered. In one of the cases, he favored white civil rights complainants, Pittsburgh police officers who sued alleging reverse discrimination, and in another he ruled in favor of a mentally disabled employee. Alito’s hostility to discrimination cases could not be more systematic, carrying over to claims against the disabled as well, where the 3rd Circuit criticized his dissent that would allow “few if any” Rehabilitation Act plaintiffs access to the courts (Nathanson v. Medical College of Pennsylvania).

Considering the distance the nation has come on race and the distance still to go, the confirmation of Judge Alito would mark a dangerous turning point. No one who reads his opinions can believe that he has the open mind required of a Supreme Court justice. Alito moved from his days in the Reagan Justice Department, where he sought unsuccessfully to get the Supreme Court to restrict discrimination remedies, to the 3rd Circuit, where he has compiled a striking record as a dissenter, rather than follow employment discrimination precedents. The evidence is too clear to leave any doubt about where Alito would stand, for example, on fragile 5-4 rulings where Justice O’Connor was the deciding vote, such as the University of Michigan case upholding affirmative action in law school admissions (Grutter v. Bollinger) and other cases where the Court has allowed race to be considered as a factor to rectify discrimination. As we approach reauthorization of the Voting Rights Act in 2007, the Congressional Black Caucus cannot afford to forget that the 5-4 cases also include redistricting cases such as Hunter v. Cromartie. A critical election year of accountability for the Congress must begin with how senators vote on this nominee. All that we have fought for in order to secure rights long denied African Americans is put at risk by this nomination. The stakes for Black people are as high as they can get, and for that reason, how senators vote cannot and will not be forgotten.